

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Lechevin, et al.
Appl. No.	:	10/031,274
Filed	:	June 11, 2002
For	:	METHOD FOR MEASURING THE SPEED OF A RAIL VEHICLE AND INSTALLATION THEREFOR
Examiner	:	Mark T. Le
Group Art Unit	:	3617

PETITION UNDER 37 C.F.R. § 1.181
TO WITHDRAW THE HOLDING OF ABANDONMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In the Notice of Abandonment mailed September 30, 2009, the U.S. Patent and Trademark Office (“PTO”) notified Applicant that the above-identified application had become abandoned for failure to file a response to a communication that the Notice of Abandonment indicates was mailed on March 21, 2008. However, Applicant’s representative, Knobbe, Martens, Olson & Bear, LLP (hereinafter the “Firm”) did not receive a copy of the Notice Under 37 CFR 1.251 – Pending Application prior to receiving the Notice of Abandonment.

This Petition Under 37 CFR 1.181 to Withdraw the Holding of Abandonment is being filed within 2 months of the mail date of the notice of abandonment, and is therefore timely.

Explanation of Firm Calendaring Process

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The Firm has reviewed its mail correspondence and can find no record of the missing Notice Under 37 CFR 1.251 – Pending Application.

In this regard, attached is a declaration by Lani K. Wimbush, explaining the Firm's docketing procedures. Ms. Wimbush has been the Supervisor of U.S. Docketing for the Firm for about 16 years and is familiar with the Firm's procedures for processing and docketing correspondence. Ms. Wimbush explains that the Firm maintains a log of docketing correspondence for each matter.

Ms. Wimbush has reviewed the docketing log for this matter. The log shows that the Firm did not receive the Notice Under 37 CFR 1.251 – Pending Application for U.S. Patent Application No. 10/031,274. In support, attached is Exhibit A that shows a copy of the docketing record for the above-identified application as of November 17, 2009.

In addition, Ms. Wimbush has reviewed the Firm's master logs for all correspondence occurring between March 21, 2008 and November 17, 2009 and has not found any correspondence, either by mail or by e-mail, that relates the Notice Under 37 CFR 1.251 – Pending Application for U.S. Patent Application No. 10/031,274. Exhibit B shows the matter log for all USPTO correspondence received by mail or e-mail with a base date of March 21, 2008.

If the Firm inadvertently associated the Notice with the wrong matter, Exhibit B would include an entry with an Action Type of "US-PAT SUB PAPER REQUEST" corresponding to a Notice Under 37 CFR 1.251 – Pending Application for some matter. However, no such entry for a Notice Under 37 CFR 1.251 – Pending Application is present in the log.

The Firm's Master Docket Reports

The missing Notice Under 37 CFR 1.251 – Pending Application set forth a three-month deadline to respond. Thus, the three-month deadline for the Notice Under 37 CFR 1.251 – Pending Application was June 21, 2008 (three months from the March 21, 2008 mailing date).

Pursuant to MPEP §711.03(c), we have attached as Exhibit C the master docket report for the firm showing all replies docketed for June 21, 2008 (the three-month date from the mail date

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of the non-received Notice Under 37 CFR 1.251 – Pending Application). If the firm had received the Notice Under 37 CFR 1.251 – Pending Application the deadline for this application would have appeared on this list – but it does not. Thus, Exhibit C is being submitted as documentary proof of nonreceipt of the Notice Under 37 CFR 1.251 – Pending Application.

In addition, Applicant has attached as Exhibit D, the file jacket associated with this patent application. The file jacket also fails to show a receipt of the Notice Under 37 CFR 1.251 – Pending Application. Furthermore, the file jacket fails to show any deadlines associated with the June 21, 2008 deadline – confirming that the Notice Under 37 CFR 1.251 – Pending Application was not received. Thus, Exhibit D is being submitted as documentary proof of nonreceipt of the Notice Under 37 CFR 1.251 – Pending Application.

Petitioner Statement

As required by 37 C.F.R. §1.181, Petitioner hereby states that the Notice Under 37 CFR 1.251 – Pending Application was not received at the correspondence address of record. Furthermore, we searched the file jacket, the application file contents, docket records for this specific application, and the firm's master docket.

These records would have contained the Notice Under 37 CFR 1.251 – Pending Application had the document been received. Instead, these records indicate that the Firm did not receive Notice Under 37 CFR 1.251 – Pending Application that gave rise to the abandonment.

Because the Notice Under 37 CFR 1.251 – Pending Application was never received by the Firm, as stated above and set forth in the attached declaration and supporting documentation, it is respectfully submitted that the application was not abandoned by the Applicant.

Thus, Applicant respectfully requests withdrawal of the Notice of Abandonment.

Concurrent Filing

In addition, subsequent to receiving the Notice of Abandonment, Applicant obtained a copy of the communication, which was a Notice Under 37 CFR 1.251 – Pending Application.

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Having now received a copy of the Notice Under 37 CFR 1.251 – Pending Application, a response is filed herewith.

Please charge any required fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11-30-2009

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